Supreme Court, U.S.
FILED
NOV 19 2006
OFFICE OF THE CLERK

No. 06-903

In the
Supreme Court of the United States

CYNTHIA LEE,
Petitioner,

v.

SYLVIA HAYDASH,
Respondent.

On Petition for a Writ of Certiorari to the Virginia State Supreme Court

PETITION FOR WRIT OF CERTIORARI

CYNTHIA LEE
Pro Se

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QUESTION PRESENTED

Did the Supreme Court of Virginia err in finding no reversible error in the lower court's decision thus denying privileges to a citizen that are secured by the U.S. Constitution 14th Amendment Right to Due Process and Equal Protection?

PARTIES TO THE PROCEEDING

The parties to the proceeding are set forth in the case caption.

Petitioner: Cynthia Lee (pro se)

Respondent: Sylvia Haydash, by her counsel Mr. Stephen M. Farmer, Esq., Stephen M. Farmer, P.C., 206 Commerce Street, Occoquan, Virginia 22125, Telephone number (703) 497-1774, Facsimile number (703) 497-4797.

TABLE OF CONTENTS

Question Presented i

Parties to the Proceeding ii

Table of Contents iii

Table of Authorities iv

Opinions Below 1

Statement of Jurisdiction 1

Constitutional Provisions Involved 1

Overview of the Case 1

Background of the Case 2

Reasons for Granting the Writ 7

I. The Evidence Presented By Petitioner Was Sufficient to Establish the Legal Elements Which Supported Her Claim of Defamation Per Se 7

II. The Petitioner's 14th Amendment Rights to Due Process and Equal Protecion Were Violated 10

Conclusion 11

Relief Sought 12

Appendix

Appendix A - Virginia Supreme Court Order Denying Rehearing of 9/21/06 . . . . . 1a

Appendix B - Virginia Supreme Court Order of 6/5/06 . . . . . 3a

Appendix C - Circuit Court Order of 10/24/05 . . . . 5a

Appendix D - Circuit Court Order of 8/9/05 . . . . . 7a

TABLE OF AUTHORITIES

Cases

Carwile v. Richmond Newspapers, Inc.,
196 Va. 1, 82 S.E.2d 588 (1954) 7, 10, 11

Fuste v. Riverside Healthcare Assoc.,
265 Va. 127, 575 S.E.2d 858 (2003) 7, 8, 9, 11

Thompson v. Skate America, Inc.,
261 Va. 121, 540 S.E.2d 123 (2001) 8

Ward's Equipment, Inc. v. New Holland N. America, Inc.,
254 Va. 379, 493 S.E.2d 516 (1997) 8

Welding, Inc. v. Bland County Service Authority,
261 Va. 218, 541 S.E.2d 909 (2001) 8

WJLA-TV, 264 Va. at 156, 564 S.E.2d at 392 11

Constitutional and Statutory Provisions

U.S. Const. amend. XIV 1, 7, 10, 11, 12

28 U.S.C. § 1254(1) 1

Va. Code Ann. § 16.1-251 3

Va. Code Ann. § 63.2-900 3

Va. Code Ann. § 63.2-903 3

Va. Code Ann. § 63.2-908 3

Va. Code Ann. § 63.2-1517 3

Other Authority

Virginia Law Review, Vol. 27, No. 3 (Jan., 1941), pp. 405 doi:10.2307/1067963 9

OPINIONS BELOW

The August 9, 2005 and the October 24, 2005 opinions of the Prince William County Circuit Court. The June 5, 2006 opinion of the Supreme Court of Virginia. The September 21, 2006 opinion of the Supreme Court of Virginia.

STATEMENT OF JURISDICTION

Jurisdiction is proper over this writ pursuant to 28 U.S.C. § 1254 (1) following the denial of rehearing by the Supreme Court of Virginia on September 21, 2006 which is a final decision. This Writ is filed within 90 days of the Supreme Court of Virginia's denial of rehearing.

CONSTITUTIONAL PROVISIONS INVOLVED

14th Amendment of the U.S. Constitution Section 1. "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

OVERVIEW OF THE CASE

Petitioner Cynthia Lee (hence forth also referred to as Ms. Lee) who was represented by counsel, filed a two count Motion for Judgment against Respondent Sylvia Haydash (hence forth also referred to as Ms. Haydash) pertaining to a letter written by Ms. Haydash dated March 29, 2004. The counts were Defamation and Intentional Infliction of

Emotional Distress. Ms. Haydash filed a demurrer. On July 20, 2005 the Prince William County Circuit Court judge sustained the demurrer on both counts stating from the bench that the statements made in the March 29, 2004 letter was entirely opinion and questioning rather providing foster care was a profession. The Judge granted leave for Ms. Lee to file an Amended Motion for Judgment. Ms. Lee who was represented by counsel filed an Amended Motion for Judgment in a timely manner. The Amended Motion consisted of only the Defamation count. Ms. Lee conceded to the lower court's stand on her Intentional Infliction of Emotional Distress claim. Ms. Haydash in turn filed a demurrer arguing that the language used in her March 29, 2004 was strictly opinion. On October 11, 2004 the Prince William County Circuit Court judge sustained the demurrer stating that the letter in its entirety was statements of opinion. The final order was entered October 24, 2005.

BACKGROUND OF THE CASE

Ms. Lee is employed by Fairfax County, Virginia Public Schools. She is a Virginia State licensed special education teacher with a Master of Science degree in Education and a Bachelor of Science degree in Social Psychology. On May 29, 2002 Ms. Lee was contracted by Children's Services of Virginia Inc. as a therapeutic foster parent of two young children M.L.P. and her cousin by marriage, S.Y., at a monthly pay rate of eleven hundred dollars ($1,100.00) per child. Both girls were classified as therapeutic foster children due to several disabilities which included emotional disturbance. Fairfax County Department of Family Services was the custodial agent that placed the minor children in the care of Children's Services of Virginia Inc., a therapeutic treatment foster care placement agency.

Ms. Lee contends that due to the severity of S.Y.'s emotional needs, her oppositional defiance, and because the two cousins behaved inappropriately together, she submitted a request for the removal of S.Y. from her home. S.Y. was removed from Ms. Lee's July 30, 2002. M.L.P. remained in Ms. Lee's care. Approximately one year later Ms. Lee was asked by representatives from Children's Services and Fairfax Family Services to become M.L.P.'s permanent foster care placement.

Code of Virginia § 63.2-908. Permanent foster care placement.

A. Permanent foster care placement means the place in which a child has been placed pursuant to the provisions of § 63.2-900, 63.2-903 and this section with the expectation and agreement between the placing agency and the place of permanent foster care that the child shall remain in the placement until he reaches the age of majority unless modified by court order or unless removed pursuant to § 16.1-251 or § 63.2-1517.

On an unspecified date in November 2003, both Ms. Lee and M.L.P. were told by M.L.P.'s Fairfax County Department of Family Services social worker, Albertine Atkins Childress and her Children's Services of Virginia Inc. case manager, Giovanna Perry-Ruffner, that M.L.P.'s guardian's, custodial rights had been terminated and that Cynthia Lee was declared M.L.P.'s permanent foster care placement. Both Cynthia Lee and M.L.P. were ensured that as permanent foster parent, Ms. Lee would be the guardian of M.L.P. until she turned eighteen years old with the possibility of an extended guardianship if M.L.P. attended college.

At the end of November 2003, Cynthia Lee was informed that M.L.P.'s cousin S.Y., was going to be released from a secured facility and placed in a foster home that would mandate the two girls to attend the same school and be in many of the same classes. Ms. Lee alleges that she expressed her professional concerns about the two cousins being placed in the same school and classrooms, to Giovanna Perry-Ruffner. She reminded Ms. Ruffner that the two girls were both emotionally vulnerable and cautioned her about the negative impact S.Y.'s presence in M.L.P.'s middle school could have on both girls' educational environment and their ability to learn. Ms. Lee argues that Giovanna Perry-Ruffner's responses to her concerns were rude and unsupportive.

Ms. Lee contends that she made several unsuccessful attempts to contact Albertine Atkins-Childress, M.L.P.'s social worker so she called the middle school and expressed her concerns about S.Y.'s school placement. Ms. Lee alleges that the school official then contacted Albertine Atkins-Childress and told her that Ms. Lee had expressed her concerns about the placement of S.Y. into M.L.P.'s school and classes. On December 16, 2003, Ms. Lee met with Marilyn Hallowell, supervisor of the Manassas and Woodbridge offices for Children's Services of Virginia. She was placed on three months probation for disagreeing with the terms of visitation between S.Y. and M.L.P., contacting the school stating concerns about the agencies' decision to place the two emotionally disturbed cousins in the same school and classes, and for calling Albertine Atkins-Childress to express her concerns. Afterward, Ms. Lee wrote two letters expressing her concerns about the placement of S.Y. into M.L.P.'s school and classes. The first letter dated December 18, 2003, was in response to their December 16th meeting. This letter stated that Ms. Lee felt the agencies were not

acting in the best interest of M.L.P.'s educational and permanent foster care placement needs. Ms. Lee also expressed her concerns about the agencies' decision to place S.Y. in M.L.P.'s school without consulting her first.

Ms. Lee alleges that on December 29, 2003, she had a telephone conversation with Marilyn Hallowell. Ms. Lee contends that she perceived Marilyn's response to be rude and unyielding therefore on January 2, 2004, Ms. Lee wrote a second letter to Ms. Hallowell. Within this letter she warned Ms. Hallowell that she would petition the court for custody of M.L.P. if the agencies continued to make decisions that were not in M.L.P.'s best interest. Consequently, on January 5, 2004, upon Marilyn Hallowell's receipt of Ms. Lee's January 2, 2004, letter, Albertine Atkins Childress and Giovanna Perry-Ruffner went to Ms. Lee's home unannounced, removed M.L.P. from her home and placed M.L.P. into another foster home. Afterward Ms. Lee's license and contract to be a therapeutic foster parent was terminated by Children's Services and Fairfax Department of Family Services.

In Ms. Lee's letters of dismissal, the agencies wrote that she was a "good" foster parent, "who made life more pleasant for M.L.P". The two reasons were given for Ms. Lee's dismissal as follows:

1. Refusal to accept that another child was being placed in a different foster home, though in the same school district as her foster child.
2. Divulging of confidential information about foster children

Ms. Lee appealed the removal of M.L.P. and her dismissal in the Fairfax County Juvenile and Domestic Court by

petitioning for custody of M.L.P. as well as following the grievance procedures as established by the agencies. Through interrogatories Ms. Lee inquired about the basis for Children's Services and Fairfax's denial of custody and request for rehire. In response she was given a letter written by Ms. Haydash who was M.L.P.'s therapist dated March 29, 2004. This letter has no addressee. Ms. Lee alleges that the letter characterized her as a "manipulative", "inappropriate" individual who needed "counseling" before she could continue as a therapeutic foster care parent.

However, in her February 17, 2003 letter, Ms. Haydash referred to Ms. Lee as an "excellent" foster parent who maintained a "safe" home with "consistent and firm, yet permeable boundaries". Ms. Lee argues that Ms. Haydash is a private for profit Licensed Clinical Social Worker who was contracted by Children's Services of Virginia and Fairfax Department of Family Services to render counseling to foster children. Ms. Lee alleges that as an employee of the agencies, Ms. Haydash filled her March 29, 2004 letter with malicious false statements in support of the agencies' unethical decision to remove M.L.P. from her home and to terminate her contractual license to be a thereapuetic foster parent.

Ms. Lee contends that Children's Services of Virginia and Fairfax Department of Family Services renowned her as a "good" foster parent who made life more "pleasant" for foster children prior to the receipt of Ms. Haydash's letter. Ms. Lee argues that the agencies used the information written in Ms. Haydash's letter to form a different rationale for removing M.L.P. and terminating her contract. To support the allegations, in her Amended Motion for Judgment Ms. Lee recalled Albertine Atkins-Childress's testimony during her hearing for visitation. Ms. Lee stated that Ms.

Atkins-Childress told the presiding judge that the agencies "questioned" her emotional state of mind. Ms. Lee contends that AlbertineAtkins-Childress's testimony during the visitation hearing was premised on Ms. Haydash's March 29, 2004 letter. Ms. Lee contends that the defamatory language written in the March 29, 2004 letter ultimately precluded her reinstatement as a therapeutic foster parent.

REASONS FOR GRANTING THE WRIT

Did the Supreme Court of Virginia err in finding no reversible error in the lower court's decision thus denying privileges to a citizen that are secured by the U.S. Constitution 14th Amendment Right to Due Process and Equal Protection?

1. THE EVIDENCE PRESENTED BY PETITIONER WAS SUFFICIENT TO ESTABLISH THE LEGAL ELEMENTS WHICH SUPPORTED HER CLAIM OF DEFAMATION PER SE

In a claim of defamation per se, defamatory words that "impute to a person unfitness to perform the duties of an office or employment of profit, or want of integrity in the discharge of the duties of such an office or employment or prejudice [a] person in his or her profession or trade" are actionable. *Carwile v. Richmond Newspapers, Inc.*, 196 Va. 1, 7, 82 S.E.2d 588, 591 (1954); *see Fuste v. Riverside Healthcare Assoc.*, 265 Va. 127, 132, 575 S.E.2d 858, 862 (2003). Furthermore, a defamatory statement may be made "by inference, implication or insinuation." *Fuste*, 265 Va. at 132, 575 S.E.2d at 862; *Carwile*, 196 Va. at 7, 82 S.E.2d at 592.

Prince William County Circuit Court judge sustained Respondent's Demurrer concluding that the statements written in her March 29, 2004 lett r were strictly opinion. Ms. Lee contends that the action by the trial court was in error because the purpose of a demurrer is to test the legal sufficiency of a pleading. *Fuste*, 265 Va. At 131, 575 S.E.2d at 861; *Welding, Inc. v. Bland County Service Authority*, 261 Va. 218, 226, 541 S.E.2d 909, 913 (2001). A demurrer admits the truth of all properly pleaded material facts and all reasonable factual inferences fairly and justly drawn from the facts alleged must be considered in aid of the pleading. *Fuste*, 265 Va. At 131, 575 S.E.2d at 861; *Ward's Equipment, Inc. v. New Holland N. America, Inc.*, 254 Va. 379,382,493 S.E.2d 516, 518 (1997). Ms. Lee asserts that the circuit court erred in finding that the defamatory statements alleged in the Amended Motion for Judgment were strictly opinion and therefore not actionable as defamation per se.

The Petitioner argues that the Virginia State Supreme Court erred when it held that the circuit court made no reversible error in its decision. On appeal, a plaintiff attacking a trial court's judgment sustaining a demurrer need only to show that the court erred, not that the plaintiff would have prevailed on the merits of the case. *Fuste*, 265 Va. at 132, 575 S.E.2d at 862; *Thompson v. Skate America, Inc.* , 261 Va. 121, 128, 540 S.E.2d 123, 127 (2001). Ms. Lee contends that enough evidence was submitted to show that the circuit court erred and to support a reversal of the circuit court's decision.

Ms. Lee submitted exhibits in her Amended Motion for Judgment that sufficiently supported the fact that foster parenting was her second profession. She claimed that Ms. Haydash intentionally used provably false factual statements

in her March 29, 2004 letter knowing the falsehood of its language and with reckless disregard for the truth.

Petitioner argues that the March 29, 2004 letter could reasonably be interpreted as stating actual facts about her in order to impute that she was unfit to perform the duties of a therapeutic foster parent and to prejudice her in this profession. Ms. Haydash's March 29, 2004 letter was submitted as evidence for the court's record. This letter made claims about Ms. Lee that she refutes. In addition, the letter concludes with Respondent's declaration that Petitioner needs to "get some counseling around her own issues" before she could have contact with foster children again. At the minimum said statements would be construed as fighting words. "All words which from their usual construction and common acceptation are considered as insults, and lead to violence and breach of peace, shall hereafter be actionable, and no plea, exception, or demurrer shall be sustained in any court within this commonwealth, to preclude a jury from passing thereon, who are hereby declared to be the sole judge of the damages sustained." *Virginia Law Review*, Vol. 27, No. 3 (Jan., 1941), pp. 405 doi:10.2307/1067963. The circuit court judge erred when he sustained Respondent's demurrer because it precluded Petitioner from having her claims brought before a jury. This circuit court's err is reversible, therefore the Virginia State Supreme Court erred when the order was not reversed and remanded back to the circuit court for trial before a jury.

The statement that Ms. Lee should "get some counseling around her own issues" can also be reasonably interpreted as stating actual facts about Petitioner. *See Fuste*, 265 Va. 127, 575 S.E.2d 858. This statement infers and/or implies that the Petitioner has psychological issues that impair her ability to be a foster mother that imputes unfitness upon the Petitioner

in her performance as a therapeutic foster parent and prejudice her in her profession as a foster parent. *Id*; *Carwile*, 196 Va. 1, 82 S.E.2d 588. Ms. Lee contends that the statements made in the Respondent's March 29, 2004 letter were provably false. *Id.*

The Petitioner had presented evidence sufficient enough to establish that the defamatory statements contained in the Respondent's March 29, 2004 letter created a basis for the Petitioner's claim of defamation per se. At a minimum, the Plaintiff's evidence was sufficient to withstand the Respondent's challenge at the demurrer stage. Therefore, the Court's ruling on the sufficiency of the Respondent's Amended Motion for Judgment, as it relates to whether the alleged defamatory statements were factual or opinion, was wrong, thus the Virginia State Supreme Court Justices erred when they did not reverse the order and remand it back to the circuit court for trial.

II. THE PETITIONER'S 14TH AMENDMENT RIGHTS TO DUE PROCESS AND EQUAL PROTECTION WERE VIOLATED

The United States Constitution 14th Amendment Section 1 states: All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Petitioner is a natural born citizen of the United States and a Virginia resident therefore she is entitled to the application of all of the laws which govern and protect her freedoms.

Ms. Lee contends that her case is similar to the Fuste case which was heard in the Virginia State Supreme Court. The Justices held in their decision that the alleged statements that Drs. Fuste and Vanden Hoek "abandoned" their patients and that there were "concerns about their competence" not only prejudice the doctors in the practice of their profession, *see Carwile*, 196 Va. at 7, 825 S.E.2d at 591, but also contained "a provably false factual connotation." *WJLA-TV*, 264 Va. at 156, 564 S.E.2d at 392. In other words, they were capable of being proven true or false. The Justices then concluded that the alleged statements may form the basis of a cause of action for defamation per se. *Fuste*, 265 Va. At 132, 575 S.E.2d. The *Fuste* case has established precedence. Just as the doctors in the *Fuste* case, Ms. Lee argues that she is entitled to the same due process and equal protection as Dr. Fuste and Dr. Vanden Hoek. In refusing Petitioner's appeal, Ms. Lee declares that the Virginia State Supreme Court has deprived her of the right to due process and equal protection under the law which violates the 14th Amendment of the United States Constitution.

CONCLUSION

The statements written in Respondent's March 29, 2004 letter directly and/or indirectly, by way of inference or implication, defamed Petitioner by imputing that she was unfit to perform her duties and/or prejudiced her in her profession as a therapeutic foster parent. *Id.* Petitioner alleges that Respondent's March 29, 2004 precluded her reinstatement as a therapeutic foster parent and her ability to obtain custody of her former foster daughter. Petitioner argues that at the

minimum, her evidence was sufficient to withstand the Respondent's challenge at the demurrer stage thus the circuit court stood in error, therefore the court's denial of Petitioner's August 4, 2005 Amended Motion for Judgment should have been reversed by the Virginia State Supreme Court. The Petitioner argues that the Virginia State Supreme Court violated her United States Constitutional 14th Amendment rights to due process and equal protection when the Justices found no reversible error in the lower court's decision thus precluding Petitioner from clearing her name and seeking justice through a trial by jury.

RELIEF SOUGHT

For the foregoing reasons Petitioner Cynthia Lee prays that this honorable body of United States Supreme Court Justices will reverse the decision of the Virginia State Supreme Court and remand this case back to the lower court for proper adjudication. Petitioner does not request oral arguments.

Respectfully submitted,

Cynthia Lee
3813 Claremont Lane
Dale City, VA 22193
(703) 670-9317

Petitioner Pro Se

APPENDIX

APPENDIX A

SUPREME COURT OF VIRGINIA

Record No. 060073
Circuit Court No. 64674

[Filed September 21, 2006]

Cynthia Lee,	)
Appellant,	)
	)
v.	)
	)
Sylvia Haydash,	)
Appellee.	)
	)

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 21st day of September, 2006.

Upon a Petition for Rehearing

On consideration of the petition of the appellant to set aside the judgment rendered herein on the 5th day of June, 2006 and grant a rehearing thereof, the prayer of said petition is denied.

A Copy,

Teste:

Patricia L. Harrington, Clerk

By: *original order signed by a deputy clerk of the Supreme Court of Virginia at the direction of the Court.*

Deputy Clerk

APPENDIX B

SUPREME COURT OF VIRGINIA

Record No. 060073
Circuit Court No. 64674

[Filed June 5, 2006]

Cynthia Lee,	)
Appellant,	)
	)
v.	)
	)
Sylvia Haydash,	)
Appellee.	)
	)

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Monday the 5th day of June, 2006.

From the Circuit Court of Prince William County

Upon review of the record in this case and consideration of the argument submitted in support of and in opposition to the granting of an appeal, the Court is of opinion there is no reversible error in the judgment complained of. Accordingly, the Court refuses the petition for appeal.

A Copy,

Teste:

Patricia L. Harrington, Clerk

By:/s/_____
Deputy Clerk

APPENDIX C

IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY VIRGINIA

Case No. 64674

[Filed October 24, 2005]

Cynthia Lee, Plaintiff,	)
v.	)
Sylvia Haydash, Defendant.	)

ORDER

THIS CAUSE CAME to be heard this 11th day of October, 2205, upon the Demurrer to the Plaintiff's Amend Motion for Judgment filed by the Defendant, SYLVIA HAYDASH; and

IT APPEARING TO THE COURT that the Demurrer should be sustained and that Amended Motion for Judgment be dismissed with prejudice; it is therefore

ADJUDGED, ORDERED and DECREED that the Demurrer filed by the Defendant is hereby sustained and Plaintiff's Amended Motion for Judgment is dismissed with prejudice.

ENTERED this 24th day of October, 2005.

/s/_____
JUDGE

SEEN AND_____:

I ASK FOR THIS:

/s/_____
Stephen M. Farmer, VSB 23004
Steven P. Woodside, VSB 30551
206 Commerce Street, P.O. Box 243
Occoquan, Virginia 22125
(703) 497-1774
Counsel for Defendant

/s/_____
Owaiian M. Jones, Esquire
404 Chatham Square
Fredericksburg, Virginia 22404
(540) 373-0605
Counsel for Plaintiff

APPENDIX D

**IN THE CIRCUIT COURT OF
PRINCE WILLIAM COUNTY
VIRGINIA**

Case No. 64674

[Filed August 9, 2005]

Cynthia Lee,	)
Complainant,	)
	)
v.	)
	)
Sylvia Haydash,	)
Defendant.	)
	)

ORDER

THIS CAUSE CAME ON THIS DAY upon the Demurrer filed by the Defendant, SYLVIA HAYDASH; and

IT APPEARING TO THE COURT that the relief set forth herein is proper and should be granted; it therefore

ADJUDGED, ORDERED and DECREED, as follows:

1. The Demurrer filed by the Defendant is hereby sustained as to both counts in the Plaintiff's Motion for Judgment.

2. The Plaintiff is hereby granted leave to file an Amended Motion for Judgment within twenty-one days of July 20, 2005.

2. The Defendant is hereby granted twenty-one days to file an Answer should the Plaintiff choose to amend her Motion for Judgment.

ENTERED this 9th day of August, 2005.

/s/_____
JUDGE

SEEN AND_____:

I ASK FOR THIS:

/s/_____
Stephen M. Farmer, VSB 23004
Steven P. Woodside, VSB 30551
206 Commerce Street, P.O. Box 243
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(703) 497-1774
Counsel for Defendant

/s/_____
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